

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: October 9, 2008

Re: Dory Waxman's Complaint against Ed Suslovic on False Endorsements

Dory Waxman and Ed Suslovic are in a three-person race for an at-large position on the Portland City Council. The other candidate is Tina Smith.

Dory Waxman has filed a complaint against Ed Suslovic regarding positive quotations about him that he has used on his campaign website (www.edsuslovic.com) and in a palmcard. She argues that the quotations are presented in a misleading manner that falsely conveys he has been endorsed by some individuals and the Portland Press Herald. She alleges that some of those quoted have not endorsed Mr. Suslovic and have not authorized him to use the quotations in his campaign communications.

With regard to the Commission's jurisdiction over this matter, candidates for municipal office in Maine towns or cities with a population of 15,000 or more are governed by the state's campaign finance laws under 21-A M.R.S.A. § 1011(1) and 30-A M.R.S.A. § 2502(1). While Section 1011(1) transfers certain of the Commission's duties to the municipal clerks (e.g., receiving candidate registrations and campaign finance reports), other duties appear to be retained by the Commission such as consideration of enforcement matters. I have conferred with the Commission's counsel. Both she and I agree that Ms. Waxman's complaint would be properly considered by the Ethics Commission, rather than the Portland City Clerk.

Ms. Waxman explains that if a user clicks on the "ENDORSEMENTS" button at the top of Mr. Suslovic's website, the user comes to a webpage with a list of positive quotations about the candidate. She argues that this leads to the interpretation that the four individuals and the newspaper quoted on the page have endorsed Mr. Suslovic. Attached to her complaint are three versions of the website printed on October 1st, 2nd, and 3rd, which demonstrate some changes Mr. Suslovic made to his website last week. Ms. Waxman makes similar arguments concerning Mr. Suslovic's palmcard, although the card does not contain the word endorsements.

Ms. Waxman asks the Ethics Commission to require Mr. Suslovic to take steps to remedy voter confusion and to assess a civil forfeiture against the candidate for violating 21-A

M.R.S.A. § 1014-A. That provision is attached, and imposes two basic requirements on candidates:

- A candidate may not use an endorsement unless the “endorser” has expressly authorized its use.
- The candidate’s communication must clearly and conspicuously state that the candidate’s use of the endorsement has been authorized by the endorser.

The statute defines endorsement to be “an expression of support for the election of a clearly identified candidate” You may wish to consider whether the positive quotations about Mr. Suslovic on his website qualify as “endorsements” under this definition when they do not make any explicit mention of the election. Ms. Waxman argues that in the context of a political campaign website, the quotations can have no reasonable meaning other than as election endorsements.

As background information, please be aware that in 2006, the Commission found that a legislative candidate, Michael Mowles, violated 21-A M.R.S.A. § 1014-A and assessed him a penalty of one dollar. Mr. Mowles obtained legal representation from the Maine Civil Liberties Union (MCLU), and appealed the Commission’s determination to the Maine state courts. He argued that the statute violates his First Amendment rights of political speech. The suit is currently under consideration by the Maine Supreme Judicial Court. The MCLU may intend to comment on this matter at your October 17 meeting.

Mr. Suslovic is expected to submit an e-mailed response to the complaint tomorrow, so I cannot summarize his response at this time. In a telephone conversation I had with him earlier this week, he advised that he has been endorsed by three of the individuals quoted (Mike Brennan, Kate Snyder, and John Anton), but not by Glenn Cummings or the Portland Press Herald. He stated that his use of quotations in his campaign communications is consistent with common practice among candidates, and he intends to bring to the Commission’s October 17 meeting examples of other candidates’ literature which he will not be able to include in his e-mail tomorrow.

Thank you for your consideration of this memo.

21-A M.R.S.A. § 1014-A. Endorsements of political candidates

1. Definition. For purposes of this section, "endorsement" means an expression of support for the election of a clearly identified candidate by methods including but not limited to the following: broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails or other similar types of general public political advertising or through computer networks, flyers, handbills, bumper stickers and other nonperiodical publications.

2. Authorization. A candidate may not use an endorsement unless the endorser has expressly authorized its use. The communication must clearly and conspicuously state that the endorsement has been authorized. If applicable, the communication must also satisfy the requirements of section 1014.

3. Civil forfeiture. A candidate who uses an endorsement without the authorization of the endorser violates this section and is subject to a civil forfeiture of no more than \$200.

4. Enforcement. The full amount of the forfeiture is due within 30 days of the commission's determination that an endorsement has been used without the endorser's authorization. The commission is authorized to use all necessary powers to collect the forfeiture. If the full amount of the forfeiture is not collected within the 30 days after the commission has determined that a violation of this section has occurred, the commission shall report to the Attorney General the name of the person who has failed to pay. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the forfeiture. This action must be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.

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Dory Waxman
192 Stevens Ave.
Portland, ME 04103.

RECEIVED

OCT 8 2008

CITY CLERK

2008 OCT -3 P 3: 03

MAINE ETHICS COMMISSION

October 2, 2008

Linda Cohen
Office of the City Clerk
389 Congress Street, Rm. 203
Portland ME 04101

RE: Ethics Complaint in At Large City Council Race

Dear Ms. Cohen:

I am writing to make a formal complaint about violations of Maine campaign laws by Ed Suslovic, who is running against me for the At Large City Council seat in Portland this November. On his campaign web site and on his campaign literature, Mr. Suslovic has presented quotations from prominent public figures and from a daily newspaper in a manner that conveys that they constitute endorsements, even though some of those quoted are not endorsing him, few or none of those quoted gave him authorization to place the quotations on literature or the web site, and Mr. Suslovic nowhere states in these communications that any endorsements listed had been authorized.

Up until October 1, 2008, Mr. Suslovic's web site violations took the following form: The site has a navigation bar near the top. One button on the bar is labeled "Endorsements." Clicking on that button took the visitor to a page that listed the following quotations, under the heading "What Others Are Saying About Ed":

"visionary"

-State House Speaker Glenn Cummings, Portland Press Herald, April 17, 2008

"...not a conventional politician."

Portland Press Herald, April 17, 2008

"I've known Ed for years and he has always stood on principle, whether it was easy or hard."

-Mike Brennan, Portland Resident, Former State Senate Maj. Leader

"Ed's commitment to Portland Public Schools and long-term decision-making is helping to ensure strong, effective education within efficient school facilities."

-Kate Snyder, Portland School Committee

"While I may not always agree with him, I truly value Ed's independent thinking. His

principled positions and fiscal discipline are much needed right now on the Council.”
-John Anton, Portland City Council

None of the other text on the page had any conceivable relation to endorsements. It included notification of a fundraiser under a heading “News and Events,” contact information for the campaign, and a brief description of the candidate under the heading “About Ed Suslovic.”

The only reasonable interpretation of this text, taken as a whole, is that the newspaper and the four individuals quoted are endorsing Mr. Suslovic, and the quotations reflect words of endorsement. Under Maine law, “endorsement” means an expression of support for the election of a clearly identified candidate by [various] methods” This is close to the common usage definition of the term. The page is titled “Endorsements,” and individuals navigating there are doing so by clicking on a button with the word “Endorsements” on it, with the expectation that the individuals and entities that appear on the linked-to page will be “endorsers.” The heading identifies each of the quotations as an “endorsement,” as “an expression of support for the election of” Mr. Suslovic, and makes clear that the quoted language below is not merely expressing support for Mr. Suslovic in general, say as a potential friend or employee, but are recommending his election to office.

However, neither Mr. Cummings nor the *Portland Press Herald* has endorsed Mr. Suslovic in this election. Mr. Brennan is apparently supporting Mr. Suslovic, but does not appear to have authorized the endorsement quotation attributed to him.

While it is possible that Ms. Snyder and Mr. Anton are endorsing Mr. Suslovic and have authorized use of the quotations in question, Mr. Suslovic’s failure to include the required text, “clearly and conspicuously stat[ing] that the endorsement has been authorized,” makes it impossible to determine whether that is in fact the case, and whether Mr. Suslovic has been expressly authorized to include the endorsement or quotations on his web site.

On or about October 2, 2008, Mr. Suslovic’s campaign updated the “Endorsement” page on the web site. The button is still labeled “Endorsement,” but the quotations from Speaker Glenn Cummings and the *Portland Press Herald* appeared under the heading “Quotes,” while the other three quotations appear under the heading “Endorsements.” The page still lacks a clear and conspicuous statement that any “endorsements” have been authorized, and the quotations that are now under the heading “Endorsements” are even more obviously “endorsements” in legal terms than before. The heading imbues each of the quotations with the meaning that the words of praise are meant to urge Mr. Suslovic’s re-election to the City Council.

These changes occurred after Speaker Cummings learned that he had been quoted without authorization and contacted Mr. Suslovic. Mr. Suslovic’s text revisions reinforce the lack of ambiguity on the original page. He presents a list of endorsements by using the heading “Endorsements” and then listing quotations underneath that heading. This is the equivalent of the text on the original Endorsements page.

On or about October 3, Mr. Suslovic has updated his web site again, this time removing the Speaker Cumming quote, but still failing to accompany the "Endorsements" with the required statement that they had been authorized.

Mr. Suslovic's campaign literature contains similar violations. The text on the back of his palm card is essentially split into two columns. The principle text in the right-hand column consists of two elements: a list of quotations similar to the one on the Pre-October 2 version of the web site, and, beneath them in large type, the statement "We Want Ed Suslovic." The quotations are:

"visionary"

Glenn Cummings, Spkr of the House PPH 4/17/08

[Portland voters know that "PPH" means "*Portland Press Herald*"]

"...not a conventional politician."

-PPH, 4/17/08

"... always stands on principle"

-Mike Brennan, fm. Senate Maj. Ldr., fm. Congressional cand.

"A true uniter ..."

-Adam Cote, former Congressional candidate.

Again, an ordinary speaker of English would interpret this text, taken as whole, to mean that the quotations made by the individuals and newspaper cited were meant to encourage voters to support the election of Mr. Suslovic. Whereas the explicit use of the word "endorsement" on the web site provides the clarity in that instance, here, the words "We Want Ed Suslovic" sound like they are coming explicitly from the endorsers. Four prominent speakers, of the sort from whom candidates typically seek and tout endorsements, speak praise of Mr. Suslovic, then say with one voice "We Want Ed Suslovic." The entire palm card is about Mr. Suslovic's campaign for re-election to the City Council, and any reasonable voter would understand that "We Want Ed Suslovic" means "We Want Ed Suslovic to be re-elected to the City Council." No one would believe it meant "We Want Ed Suslovic to play on our sports team" or "We Want Ed Suslovic to work for our company."

It is unknown whether Mr. Cote is in fact endorsing Mr. Suslovic, but again, the card includes none of the required text, clearly stating that any endorsements were authorized.

Maine's endorsement laws exist for good reasons. Endorsements carry substantial weight in elections, particularly at the local level, where association with well-known individuals is so much more important. There is a compelling interest in preventing misinformation in elections, and though it is difficult and problematic in many instances to determine the lines between truth, exaggeration and falsehood in political speech, it is easy to police the

honesty of endorsements. Either an individual expressly authorized a candidate to quote a statement of endorsement, or he or she did not.

Likewise, "clearly and conspicuously stat[ing] that the endorsement has been authorized" prevents any voter confusion on this topic. If a candidate wants to reproduce supportive quotations that are not endorsements in campaign literature, it is not difficult to do so in a way that avoids confusion. Even if the Commission determines that many or most use of supportive quotations that do not explicitly mention an election fall short of being "endorsements" in the legal sense, grouping supportive quotations together with the title "Endorsements" or with the tag-line "We Want Ed Suslovic" goes about as far as a candidate can go in converting statements of support into "endorsements" in a legal sense, and it is appropriate to sanction Mr. Suslovic's conduct in this instance.

Mr. Suslovic's violations are not merely technical. They mislead voters in precisely the way that the endorsement laws seek to prevent.

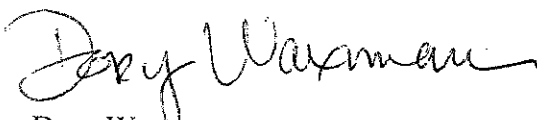
I would ask that the City Clerk or the Ethics Commission order Mr. Suslovic to cease distributing the campaign literature in question until this case is resolved. Upon a finding that Mr. Suslovic is in violation, I would ask the Clerk or the Ethics Commission to require Mr. Suslovic to take steps to remedy the voter confusion that his violations have caused, including but not limited to:

- Immediately bringing his web site into compliance
- Immediately ceasing distribution of the campaign literature in question
- Holding a press conference to clarify that Speaker Cummings is not endorsing him, and that the Speaker and others quoted did not authorize Mr. Suslovic to use quotations from them.

I would also ask that the Clerk or the Commission levy the fines available under the law for each of the several violations described in this complaint.

I have attached copies of the version of the "Endorsement" web page that existed prior to October 2, the revised version that went up on October 2, the revised version that went up on October 3, and the front and back of Mr. Suslovic's palm card. I hope the City Clerk's Office or the Maine Ethics Commission will take prompt action to remedy Mr. Suslovic's violation of election laws, as each day of inaction results in the deception of many more Portland voters.

Sincerely,



Dory Waxman

Candidate for Portland City Council

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What Others Are Saying About Ed

"visionary"

-State House Speaker Glenn Cummings, Portland Press Herald, April 17, 2008

"...not a conventional politician."

Portland Press Herald, April 17, 2008

"I've known Ed for years and he has always stood on principle, whether it was easy or hard."

-Mike Brennan, Portland Resident, Former State Senate Maj. Leader

"Ed's commitment to Portland Public Schools and long-term decision-making is helping to ensure strong, effective education within efficient school facilities."

-Kate Snyder, Portland School Committee

"While I may not always agree with him, I truly value Ed's independent thinking. His principled positions and fiscal discipline are much needed right now on the Council."

-John Anton, Portland City Council

News and Events

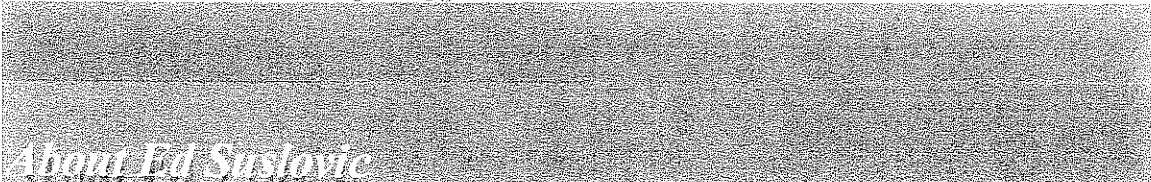
* 9-27-08 Ed Suslovic for City Council Fundraising Event

Contact Us

Contact Us

Ed Suslovic for City Council,
46 Kenwood St.,
Portland, ME 04102

Email Campaign Manager: costa.justin@gmail.com



About Ed Suslovic

10/1/08



Ed Suslovic is currently the Mayor of Portland, serving his third year of a term representing the residents of Portland on the City Council. Ed has lived in Maine for 16 years. He lives on Kenwood St. with his wife, Jennifer, and their three children - Kate, Meghan and Matthew - who attend Nathan Clifford Elementary School and King Middle School.

Ed's public and community service record is truly unparalleled. [Read more](#)

Feeling Information

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[Donate](#)

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Oct. 2, 2008

Version

HOME | ABOUT ED | ISSUES | MEDIA | ENDORSEMENTS |
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CONTACT | VOLUNTEER

Quotes

"visionary"

-State House Speaker Glenn Cummings, Portland Press Herald, April 17, 2008

"...not a conventional politician."

Portland Press Herald, April 17, 2008

Endorsements

"I've known Ed for years and he has always stood on principle, whether it was easy or hard."

-Mike Brennan, Portland Resident, Former State Senate Maj. Leader

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News and Events

✦ 9-27-08 Ed Suslovic for City Council Fundraising Event

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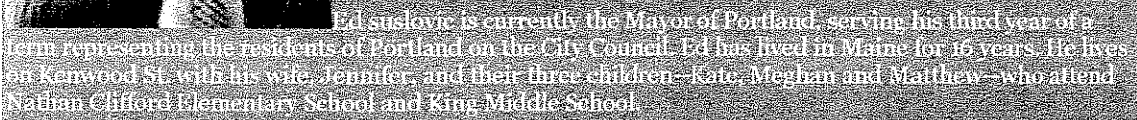
Contact Us

Ed Suslovic for City Council,
46 Kenwood St.,
Portland, ME 04102

Email Campaign Manager: costa.justin@gmail.com

About Ed Suslovic

10/2/08



Rolling Information

Oct. 3, 2008 ver.

HOME | ABOUT ED | ISSUES | MEDIA | ENDORSEMENTS |
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Quotes

"...not a conventional politician."
Portland Press Herald, April 17, 2008

Endorsements

"I've known Ed for years and he has always stood on principle, whether it was easy or hard."
-Mike Brennan, Portland Resident, Former State Senate Maj. Leader

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♦ 9-27-08 Ed Suslovic for City Council Fundraising Event

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Email Campaign Manager: costa.justin@gmail.com

About Ed Suslovic

10/3/08



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Living Information

Mayor Ed Suslovic, Councilwoman Susan Musker, Councilman John F. White, Councilman Andrew M. Whitcomb, Councilman Paul A. ...



Mayor Ed Suslovic, Councilwoman Susan Musker, Councilman John F. White, Councilman Andrew M. Whitcomb, Councilman Paul A. ...

ED SUSLOVIC *for* CITY COUNCIL

For too long Portland has been buckling under the weight of a politics paralyzed by lobbyists, special interests, backroom bargains and political posturing. Ed Suslovic is the strong, principled leader we need to stand up to the special interests and do what's right for us. As an activist, citizen, father, businessman and long-time leader Ed's always brought people together to do what's right, and he has chartered an enduring vision towards a sustainable future that will keep Portland moving forward.

Principle over Politics *EdSuslovic.com*

Paid for & Authorized by Ed Suslovic for City Council, 46 Kenwood St. Portland, ME 04102 Nick Nadzo, Treasurer

We Want in a Leader

enduring vision for our future?

*ed a sustainable Portland by strengthening
powering neighborhoods, and making
environmentally sustainable.*

*neone who's not afraid to do things
actually stand on principle?*

*the State Pier Ed's stood up to the special
its of both parties.*

*niter to bring people
what's right for us?*

*oughest challenges--and
imous city budget, a 7-1 vote
ard on the state pier project,
ly in the school budget, and
ng-term schools plan while
llion in state school funding.*



"visionary"

*-Glenn Cummings,
Spkr of the House PPH 4-17-08*

**"...not a conventional
politician."**

PPH, 4-17-08

**"...always stands on
principle."**

*-Mike Brennan,
fmr. Senate Maj. Ldr.,
fmr. Congressional Cand.*

"A true uniter..."

*-Adam Cote,
fmr. Congressional Cand.*

We Want Ed Suslovic

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OCT 10 2008

MAINE ETHICS COMMISSION

Hon. Ed Suslovic
46 Kenwood St.
Portland, ME 04102

October 10, 2008

Mr. Jonathan Wayne
Executive Director
Maine Ethics Commission
242 State St.
Augusta, ME 04333

RE: Ethics Complaint filed October 3, 2008

Dear Mr. Wayne,

I write in response to a complaint filed against my campaign for Portland City Council by one of my opponents, Ms. Dory Waxman. Ms. Waxman alleges that I have "presented quotations from prominent public figures and from a daily newspaper in a manner that conveys that they constitute endorsements, even though some of those quoted are not endorsing him, few or none of those quoted gave him authorization to place the quotations on literature or the website, and Mr. Suslovic nowhere states in these communications that any endorsements listed had been authorized."

Ms. Waxman asks the commission to require changes to the Suslovic for City Council website, to force my campaign to stop distributing our campaign literature and to hold a press conference stating that Speaker of the House Glenn Cummings, the Portland Press Herald and others either did not endorse my campaign or did not authorize my campaign's use of certain quotes.

RE: Website

Ms. Waxman's own complaint acknowledges that changes have already been made to my website. The Portland Press Herald quote from Speaker Cummings which she refers to no longer appears on the website at all, out of respect for my personal friendship with the Speaker. The second quote, "not a conventional politician," from the April 17th, 2008 story remains under a header that clearly identifies it as a "quote" not an "endorsement."

Even if the use of Speaker Cummings' public quote from the April Portland Press Herald article were invalid (which it is not), the fact that the quote has already been removed from my campaign website clearly renders this part of Ms. Waxman's complaint moot. The website page in question has already been changed to more clearly distinguish "Quotes" from "Endorsements," thus removing any ambiguity. This simple fact means the remedy Ms. Waxman seeks has already been implemented, thus clearly rendering her complaint on the matter moot.

RE: Literature

I agree with Ms. Waxman that the text of the literature in question is meant to convince voters to vote for Ed Suslovic for City Council. The back of the card lays out three rhetorical questions about the qualities that we--the voters of Portland--want in a leader. The right side of the card then provides four quotes confirming that Ed Suslovic has those qualities. Thus, the card concludes, we, the voters of Portland, want Ed Suslovic in a position of leadership, on the City Council. Ms. Waxman errs in asserting that the quotations on the card are claimed as, or constitute, or are equivalent to, official endorsements. In fact, the card makes no reference to any endorsements, and the word "endorsement" appears nowhere on it.

Ms. Waxman's argument is that the rhetorical "we" used on the card refers to the four sources (including one newspaper) that are quoted, rather than to "we" the voters of Portland. Second, she claims "We Want Ed Suslovic" is equivalent to "We Endorse Ed Suslovic," thus making the four quotes implied endorsements of my candidacy.

To the first point, arguing that "we" must refer to the four sources of the quotes is to ignore the majority of the card's text. No ordinary person, upon reading the card, would believe that the "we" in "Do we want an enduring vision for our future?" means "Glenn Cummings, the Portland Press Herald, Mike Brennan and Adam Cote," or that the "we" in that question is different from the "we" in "We Want Ed Suslovic." Any ordinary reading of the card leads one to conclude that "we" means we voters, we Portlanders, we Mainers, or something similar.

To the second part of Ms. Waxman's argument, if "We Want Ed Suslovic" is truly equivalent to "We endorse Ed Suslovic" then she must assert that the four quotes also constitute (implied) endorsements. On this line of reasoning the words "not a conventional politician" *necessarily* constitute an endorsement, and it is implied that that endorsement is being made by the news staff of the Portland Press Herald who wrote the article from which the quote is taken. It is certainly debatable whether referring to someone as "not conventional" even constitutes praise in all circumstances, let alone an unequivocal implied endorsement. It is also worth noting that the Portland Press Herald, the source of the quote, is not a party to Ms. Waxman's complaint.

RE: Disclosure and Authorization

Ms. Waxman's complaint also states in several places that my campaign materials (website and palm card) lack a necessary authorizing statement saying that a quote was authorized.

First, we do not believe that Ms. Waxman's interpretation is correct. Ms. Waxman appears to hold the belief that all endorsements appearing on campaign literature require some sort of disclaimer, akin to the disclaimer stating that a candidate has authorized a particular communication. This belief is simply incorrect, and adopting such a standard would have the effect of invalidating a sizable percentage of all campaign literature at use in our state at the municipal, state, county and federal levels.

Second, Ms. Waxman's complaint consistently fails to take into account the fact that two of the quotes she questions ("visionary" and "not a conventional politician") are taken from the public record. Both quotes come from the April 17, 2008 Portland Press Herald story and are clearly identified as such. Thus, even if Ms. Waxman's extreme interpretation of authorization were adopted, these two quotes would still not be subject to those authorization requirements.

Finally, it is important to note that, despite the allegations made, Ms. Waxman can provide no evidence that any party mentioned in her complaint was misquoted, or that any of the non-public record quotes used in our campaign materials were done without authorization of the people in question. She writes that Mike Brennan is "apparently" endorsing Ed Suslovic's reelection, that "It is unknown" whether Adam Cote is, and that "it is possible that Ms. Snyder and Mr. Anton are endorsing", and that "few or none of those quoted gave him authorization." Those statements are simply not accurate. Mike Brennan, Adam Cote, Kate Snyder, John Anton and many others have endorsed me in this race and no one, not the Portland Press Herald, nor any of the people quoted on our campaign website are parties to Ms. Waxman's complaint or have corroborated Ms. Waxman's allegation that their quotes were unauthorized.

Accordingly, I ask that all of Ms. Waxman's complaints be dismissed.